Remarks

Response to Claim Rejections Under 35 U.S.C. §102(b)

If examination at the initial stage does not produce a prima facie case of unpatentability, then without more, the applicant is entitled to the grant of the patent. See *In re Oetiker*, 977 F. 2d 1443 (Fed. Cir. 1992). Under 35 U.S.C. § 102, anticipation requires that there is no difference between the claimed invention and reference disclosure, as viewed by a person of ordinary skill in the field of the invention. See *Scripps Clinic & Research Foundation v. Genentech, Inc.*, 927 F.2d 1565. Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim. In deciding the issue of anticipation, the trier of fact must identify the elements of the claims, determine their meaning in light of the specification and prosecution history, and identify corresponding elements disclosed in the allegedly anticipating reference. *See Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452.

The Office has rejected claims 1 and 3 under 35 U.S.C. § 102(b) as being anticipated by Nicolai (U.S. Patent No. 4,942,703). All of the elements of Applicant's claim 1 and claim 3, as amended, are not found in the Nicolai reference. Regarding claim 1, there is no disclosure in the Nicolai reference of a ride body. Since claim 3 is dependent on claim 1, it incorporates all the elements of claim 1, including a ride body. Since there is no disclosure of a ride body in the Nicolai reference, it cannot anticipate Applicants claims 1 and 3.

Furthermore, the Nicolai reference does not offer teaching that would guide a skilled person towards the present invention. The present invention requires a resilient

elastomeric support structure suitable for use in a ride. This places implicit restrictions on the mechanical properties of the structure. In particular, it must be capable of deflection by a significant degree under the action of the weight of a child on the ride. It must also be capable of enduring repeated oscillation, a load regime that id highly likely to promote fatigue in the support unless carefully implemented.

This is in direct contrast to the structure disclosed by Nicolai. The purpose of Nicolai's mounting blocks is to control movement of a building in the event of an earthquake. Nicolai's support device must be able to support the weight of a building without being completely crushed. This is clearly completely unsuitable for use in a child's ride since it would almost not be deflected at all by the weight of a child. Nicolai's device is stated to be a "shock absorber", that is, a structure that dissipates energy of a vibrating body so that the energy from the earthquake is not transferred to the building's structure.

The requirements of a support for a ride are quite different. It must be "springy" so that a user's efforts to rock on the ride are not simply dissipated in the mounting structure. Therefore, a person skilled in the production of rides for children would realize that there is nothing in the Nicolai disclosure that would operate to support a ride, nor would they be presented with any reason to consider that the Nicolai reference contains any relevant information.

Most importantly, the elastomeric devices proposed by Nicolai are generally loaded in compression because of the weight of the building. It is possible that part of the mountings may be transiently in tension during an earthquake, but this is not going to present any risk of a fatigue failure. Therefore, there is nothing in Nicolai to suggest to a

skilled person that its elastomeric mounts might be applicable for use in a ride.

Response to Claim Rejections Under 35 U.S.C. §103(a)

The Office bears the initial burden of establishing a *prima facie* case of obviousness. *See In re Piasecki*, 223 USPQ785, 788 (Fed. Cir. 1984). To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 20 USPQ2d 1438 (Fed. Cir. 1991), MPEP § 2142 and § 2143.

The Office has rejected Applicant's claim 2 under 35 U.S.C. § 103(a) as being unpatentable over Nicolai in view of MacLeay et al (U.S. Patent No. 5,206,378). Since claim 2 is dependent on claim 1, it incorporates all the elements of claim 1, including a ride body. All of the elements of Applicant's claim 2, as amended, are not found in the combined references of Nicolai and MacLeay. Regarding claim 2, there is no disclosure in the Nicolai or MacLeay reference of a ride body. Since there is no disclosure of a ride body limitation in the Nicolai or MacLeay references, Applicant's claims 2 is not unpatentable over Nicolai in view of MacLeay et al.

Consideration of References Contained in the Information Disclosure Statement

There are three references in the Information Disclosure Statement that were

considered during the prosecution of companion UK Patent No. 0121655.5. These include references by Miller (U.S. Patent No. 3,932,005), Sutton (U.S. Patent No. 4,516, 766) and Steingraber (U.S. Patent No. 5,415,590). Considering the Sutton and the Steingraber references, these disclosed inventions have the disadvantage of requiring a steel shaft to cooperate with an elastomeric body to support the ride body such that it can rock. In general, when metal and plastic members interact in this way, stress risers are always generated within the elastomer where it connects with the steel component, and the structure will often fail due to local rupture of the elastomer. This is especially the case in an article in which the interconnection is subject to repeated, cyclic loads due to fatigue. It is typically the case that fatigue failure will occur catastrophically at a region that is under tension while loading is at a maximum. In the case of the ride body, it could result in injury to the rider.

For this reason, it is generally accepted by those skilled in the field of ride construction that an elastomeric structure is inappropriate, and the strong prejudice is to use a steel spring because of its predictable properties in use and failure. The Steingraber reference reinforces this prejudice.

Summary

The responses detailed above rebut the assertions by the Office of anticipation and unpatentability of Applicant's invention, since all the elements of Applicant's claimed invention are not found in the cited references. The responses substantiate the novelty and nonobviousness of Applicant's claims over the cited references. Since the rejections are unsupported for failure to find all Applicants' claim limitations in the cited references, the rejections should be withdrawn.

Applicant has made a diligent effort to distinguish the present invention over the referenced art and to place the claims in condition for allowance. However, should there remain unresolved issues that require adverse action, it is respectfully requested that the Examiner telephone Douglas D. Russell, Applicants' Attorney at 512-338-4601 so that such issues may be resolved as expeditiously as possible. For these reasons, and in view of the above amendments, this application is now considered to be in condition for allowance and such action is earnestly solicited. Reconsideration and further examination is respectfully requested.

Respectfully Submitted,

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Date

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